

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 JUL 27 P 2:46

C. A. NO. 03-12502-NMG COURT
MASS.

HARTFORD FIRE INSURANCE COMPANY,)
Plaintiff)
vs.)
EASTERN CONTRACTORS, INC.,)
Defendant/Third Party Plaintiff)
vs.)
CITY OF LAWRENCE, CITY OF FALL RIVER)
and FREETOWN/LAKEVILLE REGIONAL)
SCHOOL DISTRICT,)
Third Party Defendants)

**ANSWER OF EASTERN CONTRACTORS, INC. TO THE
COUNTERCLAIM BY THIRD PARTY DEFENDANT CITY OF FALL RIVER
WITH AFFIRMATIVE DEFENSES**

Now come the Defendant/Third Party Plaintiff, Eastern Contractors, Inc., (hereinafter "Eastern") and hereby answers the Counterclaim of Third Party Defendant, City of Fall River (hereinafter "Fall River") as follows:

PARTIES

1. Admitted.
2. Admitted.

COUNT I
BREACH OF CONTRACT

3. Eastern repeats, reavers and incorporates by reference as if fully set forth herein its answers to paragraphs 1 and 2 of the Counterclaim.

4. Admitted.

5. Admitted.

6. Denied.

7. Denied.

**COUNT II
INDEMNIFICATION**

8. Eastern repeats, reavers and incorporates by reference as if fully set forth herein its answers to paragraphs 1 and 7 of the Counterclaim.

9. Denied.

10. Denied.

11. Denied.

WHEREFORE, the Defendant, Eastern Contractors, Inc., demands that the Complaint be dismissed, that judgment enter in favor of the Defendant, and for such further relief as the Court deems just and proper under the circumstances and the applicable law.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff-in-Counterclaim has failed to fulfill all conditions precedent to the maintenance of this action, and the Complaint should therefore be dismissed.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff-in-Counterclaim has breached its contract with Eastern and is barred from any recovery as a consequence of such breach.

FOURTH AFFIRMATIVE DEFENSE

The acts and conduct complained of by Plaintiff-in-Counterclaim in the Counterclaim were caused by the acts or omissions of third persons, for whose acts or omissions Eastern is not liable, which acts Eastern had no reason to anticipate, of which persons Eastern had no knowledge and over whom Eastern did not exercise any measure of control.

FIFTH AFFIRMATIVE DEFENSE

If Eastern ever owed Plaintiff-in-Counterclaim anything, which is denied, Plaintiff-in-Counterclaim has waived such payment.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff-in-Counterclaim has failed to bring this action within the time permitted under the applicable Statute of Limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff-in-Counterclaim, by its acts and conduct, is estopped to assert that Eastern now owes Plaintiff anything.

EIGHTH AFFIRMATIVE DEFENSE

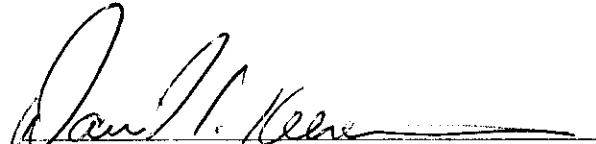
Plaintiff-in-Counterclaim has failed to complete obligations which has caused and/or will cause Eastern to expend time, labor and materials in completing such work which Eastern is and/or will be entitled to set off from any sums claimed by Plaintiff-in-Counterclaim.

WHEREFORE, the Defendant, Eastern Contractors, Inc., demands that the Complaint be dismissed, that judgment enter in favor of the Defendant, and for such further relief as the Court deems just and proper under the circumstances and the applicable law.

Defendant Eastern Contractors, Inc.
By its attorneys,

I hereby certify that a true copy of the foregoing document was served on the attorney of record for each other party in this action, by mail, postage prepaid,

on August 24, 2004
David T. Keenan



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Dated: August 24, 2004